

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JULIA HUBBARD and KAYLA
GOEDINGHAUS,

Plaintiffs,

v.

TRAMMELL S. CROW, JR., et al.
Defendants.

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Case No. 5:23-cv-00580-FB

Judge: Hon. Fred Biery

Date Action Filed: May 8, 2023 (transferred)

**DECLARATION OF GERALD E. HAWXHURST IN SUPPORT OF TRAMMELL S.
CROW'S EXPEDITED OPPOSED MOTION TO COMPEL PLAINTIFFS' FULL
COMPLIANCE WITH PREVIOUSLY ORDERED REPRODUCTION AND DOCUMENT
IDENTIFICATIONS [DKT. 325] AND FOR FURTHER
PRODUCTION OF DOCUMENTS**

I, Gerald E. Hawxhurst, declare as follows:

1. I am the managing partner at the law firm of Hawxhurst LLP, co-counsel of record for defendant Trammell S. Crow. I make this declaration in support of Mr. Crow's motion to compel Plaintiffs' full compliance with the previously ordered reproduction and document identifications and for further production of documents. I have personal knowledge of the facts stated herein, and if called upon to do so, I could and would testify truthfully and competently with respect thereto.

2. More than a month has passed since the Court first ordered Plaintiffs to reproduce all materials in the proper format and identify which documents are responsive to each request, but Plaintiffs have not done so and have not committed to a date by which they intend to comply with the Order.

3. Attached hereto as Exhibit A is a true and correct copy of email correspondence between me and Plaintiffs' counsel Matthew Schmidt from May 8 to May 29, 2024.

4. After the Court ordered them to reproduce their documents, Plaintiffs served requests for production on Mr. Crow and other Defendants instead of reproducing their documents in the proper form.

DECLARATION IN SUPPORT OF EXPENSES (ATTORNEYS' FEES)

5. I am familiar with Hawxhurst LLP's billing practices, the rates charged Mr. Crow for this matter, and the time spent by me and my colleague Kyle Foltyn-Smith in preparing the motion and related papers.

6. For this matter, my hourly rate is \$850 per hour and Mr. Foltyn-Smith's is \$650. I spent 0.5 hours reviewing and editing this motion, the proposed order and preparing my declaration; Mr. Foltyn-Smith spent 1.2 hours researching and preparing the motion papers.

7. In total, Mr. Crow incurred \$1,205.00 in attorney's fees for the preparation and filing of this motion. These amounts do not include the hours of attorney time spent sending emails and conferring with plaintiffs to obtain their compliance with the Order and discovery rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed in Jonestown, County of Travis, on the 5th day of June 2024.



Gerald E. Hawxhurst

EXHIBIT A

Kyle Foltyn-Smith

From: Matthew Schmidt <matt@schmidtllc.com>
Sent: Wednesday, May 29, 2024 4:25 AM
To: Jerry Hawxhurst
Cc: Jill Bindler; Stefan Savic; Justin Loveland; Patrick Nichols; Kyle Foltyn-Smith; London England; Ken Stone
Subject: Re: Plaintiffs' Production

Jerry:

It is a fair question; let me consult with my team on status all around and get back to you to confirm.

Best,
Matt



Matthew W. Schmidt
116A Main Street
Tiburon, California 94920
415.390.6075
matt@schmidtllc.com

From: Jerry Hawxhurst <jerry@hawxhurstllp.com>
Sent: Wednesday, May 29, 2024 12:15 AM
To: Matthew Schmidt <matt@schmidtllc.com>
Cc: Jill Bindler <jbindler@grayreed.com>; Stefan Savic <ssavic@rsf-llp.com>; Justin Loveland <jloveland@rsf-llp.com>; Patrick Nichols <pat@hawxhurstllp.com>; Kyle Foltyn-Smith <kyle@hawxhurstllp.com>; London England <lengland@grayreed.com>; Ken Stone <kstone@grayreed.com>
Subject: Re: Plaintiffs' Production

Matt:

Can we get a date certain for the compliant production? It's a fair question that deserves a clear answer. Thanks

-Jerry Hawxhurst

Cell: 310-293-2233

From: Matthew Schmidt <matt@schmidtllc.com>

Sent: Wednesday, May 29, 2024 12:22:37 AM

To: Jerry Hawxhurst <jerry@hawxhurstllp.com>

Cc: Jill Bindler <jbindler@grayreed.com>; Stefan Savic <ssavic@rsf-llp.com>; Justin Loveland <jloveland@rsf-llp.com>; Patrick Nichols <pat@hawxhurstllp.com>; Kyle Foltyn-Smith <kyle@hawxhurstllp.com>; London England <lengland@grayreed.com>; Ken Stone <kstone@grayreed.com>

Subject: Re: Plaintiffs' Production

Jerry:

I think I previously confirmed when you asked that the documents in those links were produced, I did so, and I confirmed the same with my client earlier today. But I don't see an issue with identifying the specific documents and will follow up there.

Thanks,
Matt

From: Jerry Hawxhurst <jerry@hawxhurstllp.com>

Sent: Tuesday, May 28, 2024 9:12 AM

To: Matthew Schmidt <matt@schmidtllc.com>; Ken Stone <kstone@grayreed.com>

Cc: Jill Bindler <jbindler@grayreed.com>; Stefan Savic <ssavic@rsf-llp.com>; Justin Loveland <jloveland@rsf-llp.com>; Patrick Nichols <pat@hawxhurstllp.com>; Kyle Foltyn-Smith <kyle@hawxhurstllp.com>; London England <lengland@grayreed.com>

Subject: Re: Plaintiffs' Production

Matt:

Could you also confirm that plaintiffs will be producing the materials contained in links for Dropbox and other database links that were included in the prior production. That is, the links were embedded but the documents to which the links were connected were not. Those documents should be produced, too. And they should be separately identified so we know which email link they related to.

Please confirm.

Thanks.

-Jerry

Gerald E. Hawxhurst

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From: Matthew Schmidt <matt@schmidtllc.com>

Date: Tuesday, May 28, 2024 at 5:14 AM

To: Jerry Hawxhurst <jerry@hawxhurstllp.com>, Ken Stone <kstone@grayreed.com>

Cc: Jill Bindler <jbindler@grayreed.com>, Stefan Savic <ssavic@rsf-llp.com>, Justin Loveland <jloveland@rsf-llp.com>, Patrick Nichols <pat@hawxhurstllp.com>, Kyle Foltyn-Smith <kyle@hawxhurstllp.com>, London England <lengland@grayreed.com>

Subject: Re: Plaintiffs' Production

Jerry:

I've just completed my review of my clients' texts messages extracted from their current and previous cell phones in their possession--my clients are now reviewing and then we will produce those, I'm expecting as early as Tuesday. The delay from the last time I updated was from some technical issues including an encryption password issue, which have now been resolved. We're then producing shortly after, as discussed in my last update, the remaining social media and reproducing the other documents. Given that these don't involve the same technical issue of the phone extraction (and is mostly complete), I expect that can be complete in a further day or two, as the text messages were the biggest hold-up—I expect that I want to draw a line under this as much or more than you do. We'll also as discussed be noting which RFP such documents are responsive to.

Matt

From: Jerry Hawxhurst <jerry@hawxhurstllp.com>

Sent: Monday, May 27, 2024 4:28 AM

To: Matthew Schmidt <matt@schmidtllc.com>; Ken Stone <kstone@grayreed.com>

Cc: Jill Bindler <jbindler@grayreed.com>; Stefan Savic <ssavic@rsf-llp.com>; Justin Loveland <jloveland@rsf-llp.com>; Patrick Nichols <pat@hawxhurstllp.com>; Kyle Foltyn-Smith <kyle@hawxhurstllp.com>; London England <lengland@grayreed.com>

Subject: Re: Plaintiffs' Production

When is it being produced Matthew?

-Jerry Hawxhurst

Cell: 310-293-2233

From: Matthew Schmidt <matt@schmidtllc.com>

Sent: Monday, May 27, 2024 3:30:58 AM

To: Jerry Hawxhurst <jerry@hawxhurstllp.com>; Ken Stone <kstone@grayreed.com>

Cc: Jill Bindler <jbindler@grayreed.com>; Stefan Savic <ssavic@rsf-llp.com>; Justin Loveland <jloveland@rsf-llp.com>;

Patrick Nichols <pat@hawxhurstllp.com>; Kyle Foltyn-Smith <kyle@hawxhurstllp.com>; London England <lengland@grayreed.com>

Subject: Re: Plaintiffs' Production

Jerry, thank you for checking in (and Ken for the clarification). Yes, we will follow up with our updated production. I hope that you are both having a good weekend.

From: Jerry Hawxhurst <jerry@hawxhurstllp.com>

Sent: Tuesday, May 21, 2024 2:21 PM

To: Ken Stone <kstone@grayreed.com>; Matthew Schmidt <matt@schmidtllc.com>

Cc: Jill Bindler <jbindler@grayreed.com>; Stefan Savic <ssavic@rsf-llp.com>; Justin Loveland <jloveland@rsf-llp.com>; Patrick Nichols <pat@hawxhurstllp.com>; Kyle Foltyn-Smith <kyle@hawxhurstllp.com>; London England <lengland@grayreed.com>

Subject: Re: Plaintiffs' Production

Thanks for the clarification, Ken.

Gerald E. Hawxhurst

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From: Ken C. Stone <kstone@grayreed.com>

Date: Tuesday, May 21, 2024 at 4:20 PM

To: Jerry Hawxhurst <jerry@hawxhurstllp.com>, Matthew Schmidt <matt@schmidtllc.com>

Cc: Jill Bindler <jbindler@grayreed.com>, Stefan Savic <ssavic@rsf-llp.com>, Justin Loveland <jloveland@rsf-llp.com>, Patrick Nichols <pat@hawxhurstllp.com>, Kyle Foltyn-Smith <kyle@hawxhurstllp.com>, London England <lengland@grayreed.com>

Subject: RE: Plaintiffs' Production

Actually, I think Jerry meant to say in the format as requested in the discovery requests (Request for Production) and not in Native Format. Please produce as requested in the discovery. Thank you.

Ken C. Stone

Partner

Tel [469.320.6106](tel:469.320.6106) | Fax [469.320.6878](tel:469.320.6878) | kstone@grayreed.com

1601 Elm St., Suite 4600 | Dallas, TX 75201

grayreed.com | [Connect with me on LinkedIn](#)



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From: Jerry Hawxhurst <jerry@hawxhurstllp.com>

Sent: Tuesday, May 21, 2024 3:46 PM

To: Matthew Schmidt <matt@schmidtllc.com>

Cc: Jill Bindler <jbindler@grayreed.com>; Stefan Savic <ssavic@rsf-llp.com>; Justin Loveland <jloveland@rsf-llp.com>;

Ken C. Stone <kstone@grayreed.com>; Patrick Nichols <pat@hawxhurstllp.com>; Kyle Foltyn-Smith

<kyle@hawxhurstllp.com>; London England <lengland@grayreed.com>

Subject: [EXTERNAL] Re: Plaintiffs' Production

Importance: High

Matt:

It's been almost a month since the hearing, during which the Court announced its ruling on the record.

There is no good reason why plaintiffs have not complied with the order.

If plaintiffs have not produced all responsive information in native format with metadata by Monday, we will file a motion with the Court.

-Jerry

Gerald E. Hawxhurst

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From: Matthew Schmidt <matt@schmidtllc.com>

Date: Tuesday, May 14, 2024 at 3:11 AM

To: Jerry Hawxhurst <jerry@hawxhurstllp.com>

Cc: Jill Bindler <jbindler@grayreed.com>, Stefan Savic <ssavic@rsf-llp.com>, Justin Loveland <jloveland@rsf-llp.com>

Subject: Re: Plaintiffs' Production

Jerry:

Our plan was to first produce the text messages and social media, followed shortly by the re-production of the previously produced documents.

If that wasn't what you were seeking (either in information or what you believe remains to be produced that you are aware of), please let me know or we can set up a call if you prefer.

Matt



Matthew W. Schmidt

116A Main Street

Tiburon, California 94920

415.390.6075

matt@schmidtllc.com

From: Jerry Hawxhurst <jerry@hawxhurstllp.com>

Sent: Monday, May 13, 2024 2:04:54 AM

To: Matthew Schmidt <matt@schmidtllc.com>

Cc: Jill Bindler <jbindler@grayreed.com>; Stefan Savic <ssavic@rsf-llp.com>; Justin Loveland <jloveland@rsf-llp.com>

Subject: Re: Plaintiffs' Production

What will be produced and by when?

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From: Matthew Schmidt <matt@schmidtllc.com>

Date: Monday, May 13, 2024 at 3:57 AM

To: Jerry Hawxhurst <jerry@hawxhurstllp.com>

Cc: Jill Bindler <jbindler@grayreed.com>, Stefan Savic <ssavic@rsf-llp.com>, Justin Loveland <jloveland@rsf-llp.com>

Subject: Re: Plaintiffs' Production

Jerry, the "hold up" is simply the same which I stated to Judge Chestney at our conference, in completing our collection, organization, and production of the text messages. While we are running a little behind my earlier estimate, I think that we are back on track to produce those later this week.

From: Jerry Hawxhurst <jerry@hawxhurstllp.com>

Sent: Saturday, May 11, 2024 12:46 AM

To: Matthew Schmidt <matt@schmidtllc.com>

Cc: Jill Bindler <jbindler@grayreed.com>; Stefan Savic <ssavic@rsf-llp.com>; Justin Loveland <jloveland@rsf-llp.com>

Subject: Re: Plaintiffs' Production

What's the hold up?

-Jerry Hawxhurst

Cell: 310-293-2233

From: Matthew Schmidt <matt@schmidtllc.com>

Sent: Saturday, May 11, 2024 1:01:06 AM

To: Jerry Hawxhurst <jerry@hawxhurstllp.com>

Cc: Jill Bindler <jbindler@grayreed.com>; Stefan Savic <ssavic@rsf-llp.com>; Justin Loveland <jloveland@rsf-llp.com>

Subject: Re: Plaintiffs' Production

Jerry:

Updating here, I don't recall a representation that that anything would be produced "right away"—and, having reviewed the Order again, I don't see such reflected in the Order. But I do recall saying that we were working to expediently continue and complete our production, and we are continuing to work on such over the weekend—I'll give you a further update by the end of the weekend.

Best,
Matt

From: Matthew Schmidt <matt@schmidtllc.com>
Sent: Thursday, May 9, 2024 11:03 AM
To: Jerry Hawxhurst <jerry@hawxhurstllp.com>
Cc: Jill Bindler <jbindler@grayreed.com>; Stefan Savic <ssavic@rsf-llp.com>; Justin Loveland <jloveland@rsf-llp.com>
Subject: Re: Plaintiffs' Production

Jerry:

I'm out of the office for an argument; I will update you on Friday.

Best,
Matt



Matthew W. Schmidt
116A Main Street
Tiburon, California 94920
415.390.6075
matt@schmidtllc.com

From: Jerry Hawxhurst <jerry@hawxhurstllp.com>
Sent: Wednesday, May 8, 2024 2:09 PM
To: Matthew Schmidt <matt@schmidtllc.com>; Jill Bindler <jbindler@grayreed.com>
Subject: Plaintiffs' Production

Matthew:

When can we expect the production ordered by the Court? You told the Court that you'd do it right away, which is why the Court presumably didn't give a strict deadline. If it's not going to be any longer, let us know so we can ask the court to impose a short deadline.

Thanks.

-Jerry

Gerald E. Hawxhurst

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